IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4030 OF 2006.

Protection Manufactures Pvt. Ltd.
And Ors. ..Applicants
V/s
State of Maharashtra & Anr. .. Respondents.

Mr. V.V. Purwant, Advocate for the applicant

Mr. Umesh Deshmukh, Advocate h/f Mr. Hakim Salim, Advocate for respondent No.2.

CORAM : J.H. BHATIA, J.

DATE : 22ND JANUARY, 2007.

P.C.

. Heard Mr. Purwant learned Counsel for the applicants and Mr. Deshpande, learned Counsel for respondent No.2. Respondent No.2 had filed the complaint against the applicants under section 138 of Negotiable Instruments Act on the ground that three cheques issued by the applicants in favour of respondent No.2/complainant were dishonoured. The total amount of three cheques were Rs. 9,59,926/-. Process was issued against all the applicants.

2. The learned Judicial Magistrate, F.C. allowed

the applicants to deposit the amount with a clear understanding that the same does not absolve the accused from criminal liability. Complainant/respondent No.2 accepted the demand draft without prejudice to its right to prosecute the accused. Accordingly, demand draft was handed over to the complainant. After that on some occasions, the applicants remained absent and non-bailable warrant was issued on 6/11/2006. By this application, the applicants sought several reliefs. Firstly, they wanted to quash the proceedings of criminal case No. 23/2006. They also seek to set aside the order passed by the learned J.M.F.C. allowing withdrawal of the demand draft by respondent No.2 and they also seek setting aside and quashing the order of issuance of non-bailable warrant. They also sought a direction that respondent No.2 should deposit the amount back in the Court, as amount was paid by the applicants, as full and final settlement under impression that the Criminal case would be closed, but if they want to continue the prosecution, they have no right to withdraw the amount.

3. The learned Counsel for respondent No.3 makes a statement that neither trial Court had given any

direction to the acucsed/applicants to deposit the amount nor respondent No.2/complainant had made any application to withdraw the amount. The applicants had sou motu deposited the demand draft payable to the respondent No. 2/complainant and the Court handed over to the complainant with a clear understanding that it was without prejudice to the rights of the complainant. He makes a statement that respondent No.2 shall refund the amount by giving a demand draft payable to the applicant No.1. In view of this statement, no more direction is required to respondent No.2 in this respect.

4. With the consent of the parties warrant is already cancelled.

5. In view of this, only prayer which needs to be considered is to quash the proceeding. In fact, this is only in respect of the applicant Nos. 3 to 5. Efficacious remedy of revision is available against the issuance of process against applicant Nos. 3 to 5. Therefore, it is not desirable to entertain the criminal application. The learned Counsel seeks to withdraw the application with liberty to move revision application

before the Sessions Court challenging the issuance of process in respect of applicant Nos. 3 to 5. Application stands disposed off, as withdrawn with aforesaid liberty and in view of the statement made by respondent No.2 that it would refund the amount by D.D. within two weeks.

. The proceeding against applicant Nos. 3 to 5 shall remain stayed for three weeks, so that they may file revision petition before the Sessions Court against issue of process.

(J.H. BHATIA, J.)